

OVERVIEW

The Adoption and Safe Families Act (ASFA) **does not** modify the Indian Child Welfare Act (ICWA) or Michigan Indian Family Preservation Act (MIFPA). In cases of conflict between ASFA and ICWA/MIFPA, the requirements of ICWA/MIFPA apply. Adoption may only be considered as a permanency plan for the Indian child when the termination of parental rights provision in ICWA/MIFPA can be met.

Any permanency plan developed for an Indian child that provides for an out-of-home placement, including an adoptive placement is subject to the placement preferences in ICWA/MIFPA.

PRE-ADOPTIVE PLACEMENT

Case Conference or Family Team Meeting (FTM)

The caseworker must hold a case conference or Family Team Meeting (FTM) before a pre-adoptive placement is made or approved. The caseworker must invite the appropriate tribal or Indian representative. All efforts must be documented by the caseworker in social work contacts.

Indian Child Welfare Act placement preferences for adoptions must be followed; see NAA 215, Placement Priorities for Indian Child(ren).

NOTICE OF INDIAN CHILD ADOPTION

When the permanency plan is adoption for any Indian child who is a permanent court ward or an MCI ward under the department's supervision, complete form DHS-120, American Indian/Alaska Native Indian Child Welfare Case Notification, **by registered mail with return receipt to all** of the following:

- Parent(s).
- Indian custodian(s), if any.
- Tribe(s), when known or upon receipt of verification from the Midwest Bureau of Indian Affairs of the Indian ancestry of that tribe.

- Midwest Bureau of Indian Affairs (as designated for Michigan by the Secretary of the Interior); if specific tribe is undetermined and/or multiple tribes are noticed.
- Bureau of Indian Affairs regional office specific to the tribe/state; if tribe is not located in the Midwest Bureau of Indian Affairs region.
- Notification must also be sent to the tribe(s) located in the county of client residence and/or CPS complaint; if specific tribe is undetermined.

Notification of hearing to terminate parental rights must be **received** by all those listed above at least 10 calendar days before the hearing date.

Note: A copy of the DHS-120 and return receipt must be filed in the case record and with the court of jurisdiction. Failure to complete proper notice may jeopardize and nullify the court proceedings

ADOPTIVE PLACEMENT

Adoptive placement must not be made pending a determination of the child's Indian status.

REFERRAL TO A CHILD PLACING AGENCY FOR ADOPTIVE PLACEMENT

If the child is determined to be Indian, **the caseworker must consult (or document attempts to consult) with the tribe to obtain their recommendation on which child placing agency should provide adoption services.** If the child's Indian status cannot be documented, but the Indian child's adoptive evaluation indicates placement with an Indian family is in the Indian child's best interest, that Indian child must be referred to an Indian child placement agency for adoption services.

Child Placement Agency Referral

A referral to a child placement agency must include:

- The initial and updated social history.
- An affidavit of parental request or denial for anonymity (DHS-1919, Parent's Consent/Denial To Release Information To Adult Adoptee) must be attached, when appropriate.
- Information concerning the interest of the Indian child's foster parent(s) in adopting the Indian child.
- Information on siblings.
- The Indian child's racial status other than Indian.
- Other factors that might affect the placement decision.

Child Placing Agency Response

The child placing agency must respond in writing by indicating:

- They have a family available and anticipate placement within sixty days; **or**
- They do not have a family available, but they expect to recruit an appropriate family for placement. The response must indicate the timeframe for recruiting an appropriate family; **or**
- The Indian child is not appropriate for placement by the agency, and they are declining the referral.

When a child placing agency has assessed an Indian child as being inappropriate for placement with their agency, the agency must return the referral along with written comments as to why placement was not possible. **The local office must follow the order of ICWA placement preferences in placing the Indian child.**

VOLUNTARY PROCEEDINGS FOR TERMINATION OF PARENTAL RIGHTS TO AN INDIAN CHILD

See NAA 255, Termination of Parental Rights.

**VACATING AN
ADOPTION ORDER
THROUGH FRAUD
OR DURESS**

After the entry of a final order of adoption of an Indian child in any state court, any parent who wishes to withdraw consent on the grounds that consent was obtained through fraud or duress, may petition the court to vacate the decree. Upon a finding that the consent was obtained through fraud or duress, the court must vacate the adoption order and return the Indian child to the parent(s).

Note: No adoption that has been effective for two years or more may be invalidated under the provisions of this subsection unless otherwise permitted under state law [Indian Child Welfare Act, 25 USC 1913(D)/Michigan Indian Family Preservation Act, MCL 712B. 1 - 41.].

LEGAL BASIS

Adoption and Safe Families Act, 42 USC 601 et seq.

Indian Child Welfare Act, 25 USC 1901 et seq.

Michigan Indian Family Preservation Act, MCL 712B. 1 - 41.